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1952.

File No. O/Railway/52
No. 51/52
Legal Department
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Subject:— Opinion on the Indian Railway Act, 1952.

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SNT/17.7.

Office of the R.L.A.

Section 77 of the Railway Act has no application to the claims of Government (Pl. see R.L.A's opinion No.6726, dated 17-6-1949 - copy attached). This may be brought to the notice of the Railway Authorities and they may be requested to reconsider the matter.

Sd/- P.M.LAD.
20/3.

Remembrancer of Legal Affairs.

U.O. to S.T.O., No. C-123, dated 24th March 1952.

SM/16.7.

No.

Office of the
State Textile Controller,
6-A, Cooperage, Fort,
Bombay 1, 1952.

To,

The Chief Commercial Manager,
Southern Railway,
Park Town, Madras.

Subject: Re: Claim for shortage of 3 bales out of 42 bales of cloth despatched under Invoice No. B-28 of 16/5/49 ex-Hadi Bunder to Bijapur.

....

Sir,

I am to refer to the correspondence resting with your letter No. F.D. 30/6193/49, dated 17th May 1951, on the above subject, and to state that the view taken by you that the claim for compensation in respect of 3 bales lost in transit cannot be entertained as it was not preferred within 6 months from the date of booking of the consignment as required under section 77 of the Indian Railways Act, 1890, is not correct. Section 77 refers to a 'person' who should prefer his claim in writing for the loss, destruction or deterioration of goods delivered to be carried by the Railway, to the Railway Administration, within six months from the date of the delivery of the goods for carriage. The term 'person or persons' used in Statutes do not include the Crown unless specific intention to the contrary appears in the Statute (R.V. Davies, I Ir. Jurisdiction 81). Section 77 has therefore no application to the claims of Government.

2. I am further to invite your attention to your letter No. F.D. 30/6193/49, dated 10th October 1950 addressed to the Collector of Bijapur in which you have stated that the G.I.P. Railway has advised you that the 3 bundles are lost due to running train theft and that the case is under investigation. In your letter of even number dated 10th May 1951 addressed to me you have also admitted that the 3 bales were lost over the G.I.P. Railway. It has been held in Govindlal Vs. Governor General I.L.R. 1947 Nag. 369 that if there is an admission by the Railway Company of the

goods then the admission dispenses with the enquiry into the validity or invalidity of the notice of claim. Since as pointed out in Shamsul Esq. Vs. Secretary of State (I.L.R. 57 Cal.1286) section 77 is only intended to give an opportunity to the Railway Company to make satisfactory investigation.

3. I am therefore to request you to reconsider the matter in the light of above and entertain the claim for compensation in respect of 3 bales.

Yours faithfully,

State Textile Controller, Bombay.

Office of the R.L.A.

Necy. Draft letter is approved.

Sd/- P.F.L.

R.L.A.

U.O. to S.T.C. No. C-303, dt. 7-7-1952.

SET/17-7-56.

Office of the R.I.A.

Each consignment being an independent transaction, it was within the competence of the Railway authorities to insist on a separate indemnity bond in respect of each consignment.

Sd/- P.M.LAD.
22/10.

Remembrancer of Legal Affairs.

U.R. to S.T.C., No. C-556, dated the 23rd October 1952.

SMT/17.7.

Office of the R.L.A.

In this case the amount to be recovered is small namely Rs. 593/7/- only and it does not seem advisable to file a suit to settle a dispute between two Governments. Besides it is stated at the end of the circular dated the 10th October 1950 issued by the Government of India, Ministry of Food that the Railway Board has issued instructions to the Railways to establish a machinery for consultation and avoidance of Law Suits. It would therefore be advisable to refer the matter in the first instance to the Railway Board as the question is of general importance.

Sd/- P.M.LAD.
14/11.

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. C-623, dated the 15th November 1952.

SNI/17.7.